

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREG ABBOTT, in his capacity as
GOVERNOR OF THE STATE OF TEXAS,
and THE STATE OF TEXAS,

Defendants.

Case No. 1:23-cv-00853-DAE

JOINT ADVISORY

Pursuant to Judge Howell's July 22, 2024 order granting ECF No. 179, the parties hereby submit this joint advisory and state as follows:

I. Motions ripe for consideration at the July 25, 2024 hearing

The following Daubert and/or discovery motions were referred to Judge Howell and are now fully briefed. The parties agree that these motions will not be resolved absent a ruling by the Court:

Daubert or discovery motions of Plaintiff

- United States' Motion to Compel, ECF Nos. 164 (motion), 180 (opposition), and 183 (reply)
- United States' Motion to Exclude Certain Opinions of Captain Thomas Ciarametaro, ECF Nos. 170 (motion), 177 (opposition), and 181 (reply)

Daubert or discovery motions of Defendants

- Defendants' Motion to Exclude or Limit the Expert Witness Testimony of Adrian Cortez, ECF Nos. 130 (motion), 151 (opposition), and 184 (reply)
- Defendants' Motion to Exclude or Limit the Expert Witness Testimony of Tim MacAllister, ECF Nos. 159 (motion), 176 (opposition), and 186 (reply)
- Defendants' Motion to Exclude or Limit the Expert Witness Testimony of John C. Timmel, ECF Nos. 160 (motion), 175 (opposition), and 182 (reply)
- Defendants' Motion to Compel and Request for *In Camera* Review, ECF Nos. 171 (motion), 173 (opposition), and 185 (amended motion)¹
- Defendants' Motion to Compel the Testimony of Justin Peters, ECF Nos. 172 (motion), 178 (opposition), and 187 (reply)

The parties mutually acknowledge that the Court will hold the hearing of the above-referenced motions remotely via Zoom, starting at 9AM CT on Thursday, July 25, 2024, as indicated on the Court's calendar.

II. Other motions referred to Judge Howell

The following additional motions were filed and briefed, and have been referred to Judge Howell, but the parties agree that they do not require argument at the hearing that Judge Howell has scheduled for July 25, 2024:

1. United States' Motion for Protective Order, ECF Nos. 126 (motion), 137 (opposition), and 142 (reply)

The parties' previous Joint Advisory informed the Court that they had resolved the portion of this motion that sought to enforce the presumptive limit of ten depositions per party.

¹ The United States agrees that the amendments to Texas's motion did not necessitate a further written opposition by the United States and that the motion may be considered fully briefed.

ECF 139 at 3. Through meet-and-confers, the parties resolved or narrowed their disputes concerning certain of the examination topics included in Texas's four 30(b)(6) notices to United States agencies, which were the subject of the remainder of this motion. The four noticed United States agency or agency components included: (1) the U.S. Army Corps of Engineers (USACE); (2) the U.S. Section of the International Boundary and Water Commission (USIBWC); (3) the U.S. Coast Guard; and (4) U.S. Customs and Border Patrol. Each of these entities has now testified. Thus, the original scope of the dispute presented by this motion as set forth in ECF Nos. 126, 137, and 142 has been superseded by subsequent developments. USACE testified on July 12, 2024. There was no subsequent meet-and-confer request or other action taken following that deposition to seek any further relief. USIBWC, the Coast Guard, and USCBP testified on July 15, 17, and 18, respectively, and each of those depositions was closed by agreement. For the above reasons, the parties agree that the United States' motion for protective order does not require argument on July 25.

2. Defendants' Motion to Strike Plaintiff's Motion for a Protective Order, ECF Nos. 136 (motion), 141(opposition), and 143 (reply)

The parties each reserve their position on the merits of this motion, but agree that it does not require argument and could be decided on the papers should the Court find that necessary.

3. Defendants' Motion to Compel Plaintiff's Interrogatory Responses, ECF Nos. 133 (motion), and 149 (response)

Defendants filed this motion on June 27, 2024. Plaintiff filed a Response on July 5, 2024, representing that the United States intended to serve by July 10, 2024, an amended response withdrawing certain objections, evaluating whether to withdraw others or explaining its basis for maintaining them, and providing additional substantive answers. ECF No. 149 at 2-3. Plaintiff's Response advocated that there had been no meet-and-confer regarding the United

States' then-operative interrogatory answers, and that the motion should therefore be denied without prejudice to re-filing in response to the United States' then-forthcoming amended answers, should there remain a dispute regarding those amended answers after a meet-and-confer. *Id.* at 2, 4. Defendants did not file a reply.

Subsequent to the Response, the United States served its Second Amended Response to Defendants' Interrogatories on July 10, 2024. As the United States had anticipated in its July 5 filing, this discovery response withdrew certain objections, explained the basis for retaining others, provided additional substantive answers, and noted that further substantive answers to Interrogatory 16 would be provided at a later date. No meet-and-confer was requested regarding the Second Amended Response.

The United States also served a Third Amended Response to Defendants' Interrogatories on July 22, 2024. As promised in the July 10 Second Amended Response, this discovery response provided further substantive answers to Interrogatory 16.

The United States continues to object to several of Texas's interrogatories as impermissibly compound, and on the basis of that and other objections, refuses to provide an answer to Texas's Interrogatories 17 and 19. Texas believes that it is owed an answer to these interrogatories. The parties each reserve their position on the merits of this motion, but agree that it does not require argument and could be decided on the papers should the Court find that necessary.

The parties agree that other issues in the motion to compel (ECF No. 133) have been rendered moot by the developments summarized above.

Dated: July 23, 2024

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CERTIFICATE OF SERVICE

I certify that on July 23, 2024, a copy of this filing was served on counsel of record through the Court's electronic filing system.

/s/ Brian H. Lynk
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